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FISCAL IMPACT REPORT

SPONSOR Nava **ORIGINAL DATE** 2-3-2007
LAST UPDATED 2-7-2007 **HB** _____
SHORT TITLE Students with Disabilities Scholarship Act **SB** 537/aSEC/aSFC
ANALYST Dearing

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	*\$0.1	*\$0.1	Recurring	*Students with Disability Scholarship Fund
	*Please see narrative			

(Parenthesis () Indicate Revenue Decreases)

*If SB 537 were enacted, would affect the created *Students with Disability Scholarship Fund*

Duplicates HB 518

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)

Commission for the Deaf and Hard of Hearing Persons (CDHHP)

Responses not Received From

Commission from the Blind

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amends House Bill 537/aSEC such that;

1.) On page, 5, line 2, after the period insert “The department shall submit an annual report to the legislative finance committee and to the legislative education study committee.”.

Senate Finance Committee amendment mandates annual reporting of the scholarship program to LFC and LESC.

Synopsis of SEC Amendment

The Senate Education Committee amends House Bill 537 such that;

- 1.) On page, 2, line 24, after the semicolon insert “and”.
- 2.) On page 2, line 25, and page 3, lines 1 and 2, strike Paragraph 3 in its entirety.
- 3.) Renumber the succeeding paragraph accordingly.

Senate Education Committee amendments make a significant change to the proposed legislation, thereby removing language that specified non-eligibility for disabled student scholarships from that fund; for either prior-recipients, or those that had been eligible for services from the Vocational Rehabilitation division at PED.

The intent of the changes are such that students who were eligible or had received funding for rehabilitation through PED’s existing program for disabling conditions can receive scholarships if Senate Bill 537/aSEC/aSFC is enacted.

In this version, the term “students with disabilities” is defined solely as a student with record of a disability that is recognized by the Higher Education department; to include conditions that limit one or more major life activities¹. The original version contained this definition, and added limiting language specific to the rehabilitation program participants and those eligible. The amendments greatly clarify the intended program recipients.

Synopsis of Original Bill

Senate Bill 537 would create a new section of statute to establish the Students with Disability Scholarship Act. The bill prescribes policies and procedures for administration of provisions of the act and establishes eligibility for scholarship award recipients. SB537 creates the non-reverting Students with Disability Scholarship Fund. The fund would consist of appropriations, gifts, grants and donations, and any interest the account would accrue. Subject to appropriations by the Legislature, the Higher Education department would direct disbursements from the fund for scholarships of not more than \$1000 per semester to disabled student award recipients. Finally, as written, the act mandates individual post-secondary institutions to provide annual reporting on program activity to the Higher Education department, including cooperative efforts in data collection and sharing to administer the program.

FISCAL IMPLICATIONS

*Senate Bill 537 carries no direct appropriation from the general fund.

* Total Scholarships available from the proposed fund would be limited to legislative appropriations or otherwise available funding, however no estimates of the demand for these scholarships were provided by reporting agencies.

¹Louisiana State University Law Center; “Many of the federal courts do not like the broad reach of the ADA and have attempted to limit it by a restricted reading of what constitutes a major life activity. The regulations to the Rehabilitation Act, which also govern this aspect of the ADA, are ambiguous: “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Some courts take this literally, finding that activities that are not on the list, such as reproduction, are not major life activities.” http://biotech.law.lsu.edu/cph/articles/SC_ADA/mobarada-What.html

Senate Bill 537 creates a new fund, the Students with Disability Scholarship Fund, and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The proposed legislation does not prescribe a methodology for prioritizing applications in the case of scholarship demand exceeding the annual appropriation or otherwise available funds.

SIGNIFICANT ISSUES

According to recently received information from the Higher Education department, the following table provides the current numbers of students with disabilities for the listed schools and programs.

<u><i>Institution</i></u>	<u><i>Students with Disabilities served</i></u>
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<i>CNM-</i>	<i>1,346 students</i>
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<i>UNM (Main) -</i>	<i>303 students enrolled in graduate, undergraduate, and professional classes 90% were retained the following year and 2.99 was the overall grade point average</i>
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<i>NMSU (Main) -</i>	<i>350 students</i>
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<i>DVR-</i>	<i>1250 (Gary Beene)</i>
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The makeup of student with disabilities varies between semesters and campuses as the admission requirements of community colleges versus comprehensive and research institutions vary. The majority of students with disabilities at 4-year institutions are learning disabled students. Students with disabilities at 2-year schools are learning disabled and developmentally delayed. Therefore, the community college's mission of providing services to students with disabilities has a broader scope in delivery of services as compared to that of a 4-year school.

The New Mexico Higher Education department provides oversight of public postsecondary education institutions. Institutions are responsible for the organization and coordination of all services for students with disabilities under several sections of federal law.

The number of eligible persons, including a probable estimate of potential applicants is indeterminate given agency responses and language included in the bill. According to a New Mexico Human Services department publication², 368,721 individuals in New Mexico have some kind of mental disorder.³

Although this number is (substantially) large, a more accurate estimate for potential demand could be developed from the number of New Mexicans having received pre-employment

² Source: New Mexico Human Services department, *Behavioral Health Needs and Gaps in New Mexico*, 2002

³ Executive summary of *Behavioral Health Needs and Gaps in New Mexico*, 2002; "While this number may seem high, (it represents about 28 percent of the state's total population.) the Surgeon General indicates that as many as 30 percent of the nation's population could benefit from treatment for mental health needs alone, not counting substance abuse/dependence disorders. This figure for New Mexico is a refinement of prevalence estimates based on the best scientific data and studies available at this time (Chapter III)."

vocational rehabilitation services. These services include medical treatment, guidance and counseling, training and job search skills and are provided by the Public Education department’s New Mexico Division of Vocational Rehabilitation. As written, Senate Bill 573 eliminates all clients that have received rehabilitation services from those eligible to receive scholarships from the Students with Disability Scholarship Fund.

Specifically, those who have received any services through PED’s rehabilitation program are not eligible. *However, scholarship eligibility is extended to those that are ineligible for the PED program.* The following table illustrates the number of disabled participants receiving vocational rehabilitation and disaggregates them by condition.

Disabling Conditions of Vocational Rehabilitation Clients	Count	%
Orthopedic/ Neurological Impairment	1806	20.6%
Mental Illness (Including Psychotic/ Neurotic/ Behaviour Disorders)	1767	20.2%
Learning Disabled	2084	23.8%
Achohol/ Substance Abuse	402	4.6%
Mental Retardation	374	4.3%
TBI	260	3.0%
Spinal Cord Injury	80	0.9%
Deafness	355	4.0%
Hearing Impairments	613	7.0%
Epilepsy	90	1.0%
Cardiac/ Circulatory Disorders	92	1.0%
Blindness/ Visual Impairments	52	0.6%
Deaf-Blind	7	0.1%
Other	785	9.0%
TOTAL	8767	100%

Table 1. Major Disabling Conditions of NM Div. of Vocational Rehabilitation Clients⁴

One condition for eligibility for an applicant is a record of a physical or mental condition that substantially limits one or more major life activities. Major life activities are not clearly defined within the Americans with Disabilities Act and many federal courts have tried to restrict the broad reach of this act.⁵

PERFORMANCE IMPLICATIONS

As written, the legislation would require each public postsecondary education institution to submit a report annually to NMHED that includes information required by the department regarding recipients of the students with disabilities scholarship. Additionally, the department and public postsecondary education institutions shall cooperate in data collection and data sharing and for other matters necessary to carry out the provisions of the Students with Disabilities Scholarship Act.

ADMINISTRATIVE IMPLICATIONS

The Higher Education department would be responsible for administration of the fund and

⁴ Public Education department’s *New Mexico Division of Vocational Rehabilitation Annual Report*; 2006

⁵ Louisiana State University Law Center; “Many of the federal courts do not like the broad reach of the ADA and have attempted to limit it by a restricted reading of what constitutes a major life activity. The regulations to the Rehabilitation Act, which also govern this aspect of the ADA, are ambiguous: “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Some courts take this literally, finding that activities that are not on the list, such as reproduction, are not major life activities.” http://biotech.law.lsu.edu/cphl/articles/SC_ADA/mobarada-What.html

promulgation of rules for scholarship distribution and eligibility.

TECHNICAL ISSUES

Little clarification exists in the definition of “students with disabilities,” conditions that would be eligible for the scholarship but are not eligible for vocational rehabilitation are not obvious. Clarification is necessary to establish the scope and scale of eligibility and examples of eligible conditions.

Conditions for eligibility of a student with disabilities as Senate Bill 537 is written:

- Be a resident of New Mexico;
- Be an undergraduate student enrolled at least half-time in a degree program in a public postsecondary education institution in New Mexico;
- Not have received or is not eligible for financial assistance from the Division of Vocational Rehabilitation; and
- Comply with other rules promulgated by NMHED.

Lastly, the proposed legislation does not prescribe a methodology for prioritizing applications in the case of scholarship demand exceeding the annual appropriation.

DUPLICATION

Senate Bill 537 duplicates House Bill 518.

OTHER SUBSTANTIVE ISSUES

A major undertaking of section the Rehabilitation Act of 1973, (Pub. L. No. 93-112, codified at 29 U.S.C. 701 et seq.) was to increase participation by young people with disabilities in postsecondary education and training programs and provide a national framework for vocational and other rehabilitation services.

The Americans with Disabilities Act of 1990 (ADA) (Pub. L. No. 101-336, codified at 42 U.S.C. 12101 et seq.) is a wide-ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability. The act sought to rectify, among other issues, discrimination against individuals with disabilities persisting in critical areas such as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services. The act specified that exclusionary qualification standards and criteria, segregation, and relegation to lesser (public) services, programs, activities, benefits, jobs, or other opportunities affected opportunities for this group.

AMENDMENTS

LFC suggests a proposed amendment such that annual or semi-annual reporting on program activity is also provided to the Legislative and Executive branches. (Similar to language found in House Bill 97)